

Appln No. 10/801,901
Amdt date September 24, 2004
Reply to Office action of June 25, 2004

REMARKS/ARGUMENTS

Applicants respond to each point raised by the Examiner in the June 25, 2004 Office action as follows:

Telephone Interview With Examiner on September 22, 2004

Pursuant to Applicants' request, Examiner Hale participated in a telephone interview with one of Applicants' attorneys of record, Brian Yates of the law firm Christie, Parker & Hale, LLP, on September 22, 2004. Applicants and their counsel would like to express their appreciation to Examiner Hale for her time and assistance with this matter.

During the telephone interview, Mr. Yates expressed Applicants' view that the pending claims are patentable over the prior art of record. To further clarify the differences between Applicants' claimed method of using its breast form system and the teachings in the prior art relied on in the June 25 Office action, Mr. Yates offered to amend independent claims 1 and 3 by replacing the limitation "an interior surface" with the limitation "a concave interior surface." Examiner Hale indicated that making those amendments would place claims 1-6 in condition for allowance over the prior art of record.

Mr. Yates also stated Applicants' desire to add a new independent claim directed to a breast form system that can be used to practice the claimed methods of use. After discussing the limitations of the proposed new independent claim, Examiner Hale indicated that she would allow Applicants to add the proposed claim to the application by filing the present

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Amendment, and that the claim would be allowable over the prior art of record. Accordingly, Applicants have added claim 7.

Objection to the Specification

The specification was objected to because the abstract contained more than 150 words. In accordance with the Examiner's requirement, Applicants have submitted an appropriate replacement abstract, thereby overcoming the objection.

Claim Rejections Under 35 USC § 103(a)

Claims 1-6 were rejected under 35 USC § 103(a) as being allegedly unpatentable over Noble et al. (U.S. Pat. No. 5,755,611) in view of Wild (U.S. Pat. No. 5,792,292).

As reflected above, independent claims 1 and 3 have been amended to clarify that each breast form comprises a "concave" interior surface adapted for placement over the user's breasts. This structural limitation, in combination with the other recited limitations, is not disclosed, taught, or suggested by Noble et al. and/or Wild. Moreover, the limited teachings of Wild relating to the construction of a single breast prosthesis provides no motivation for modifying the Noble et al. bra to the extent necessary to fall within Applicants' claims.

Accordingly, independent claims 1 and 3, and each of the claims depending therefrom, are allowable over the prior art of record. Similarly, newly added independent claim 7 recites, among other things, the structural limitations of each breast form comprising a volume of silicone gel encased between thermoplastic film material, and a concave interior surface

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facing towards a user's breast. Thus, claim 7 is also allowable over the prior art of record.

Double Patenting Rejections

Claims 1-6 were rejected under the judicially created doctrine of double patenting over claims 1-7 of U.S. Patent No. 6,758,720* (Application No. 10/159,251, allowed claims 30-36), and were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-10 of copending Application No. 10/801479 and the claims of Application No. 10/21110, which has issued as U.S. Pat. No. 6,780,081.

To obviate these rejections, Applicants are submitting concurrently herewith an appropriate terminal disclaimer, which is also suitable for newly added claim 7.

* The Examiner mistakenly listed U.S. Pat. No. 6,615,832 as the grounds for the double patenting rejection. The proper patent is U.S. Pat. No. 6,758,720. The Examiner did, however, identify the proper Application Number of 10/159,251, which issued as U.S. Pat. No. 6,758,720, and also identified the proper claims from the '720 patent and from the application leading to that patent. The '832 patent listed by the Examiner does identify David E. Chen as the inventor, who is also one of the inventors of the present application, and the '832 patent is assigned to Bragel International, Inc., the present assignee. The subject matter, the serial numbers, and the issued claims of the '832 patent show that the '832 patent should not have been listed as the grounds for the present double patenting rejection.

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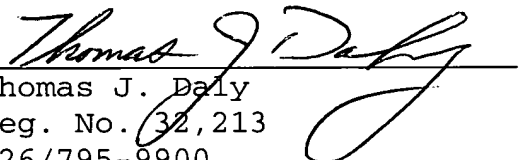
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Conclusion

In view foregoing amendments and remarks, Applicants submit that pending claims 1-7 are in condition for allowance and, accordingly, a timely indication thereof is respectfully requested.

Respectfully submitted,
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